IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5412 OF 2004

Mahendra P. Shah & ors. .. Petitioners

versus

M/s.Jethanand & Sons .. Respondents

...

Mr.Madhav J. Jamdar for the petitioner.

CORAM : D.G. KARNIK, J

DATED : 30th August 2004

P.C:-

1. Heard the learned counsel for the petitioner landlord.

2. The learned counsel for the petitioner presses two grounds for eviction viz i) default in payment of the rent and ii) reasonable and bonafide requirement.

3. As regards the ground of default, the suit premises were purchased by the petitioners on 18th June 1983. By a notice of demand dated 18th September

1983, they demanded the arrears of rent from January 1969. The conveyance deed does not show that the right to recover arrears of rent was assigned to them. In the circumstances, they were not entitled to recover arrrears of rent prior to the date of the purchase of the property. The respondent was therefore, enot in arrears of rent for a period of 6 months or more on the date of notice.

4. In Sheikh Noor & Anr Vs. Sheikh G.S. Ibrahim(Dead) by LRs reported in (2003) 7 SCC 321, the Supreme Court has observed:

> "In view of the cases referred to above, in our opinion, the correct position of law is that a transferee is not entitled to recover the arrears of rent for the property on transfer unless the right to recover the arrears is also transferred. If the right to recover the arrears is assigned, then the transferee landlord can recover those arrears as rent and if not paid, maintain a petition for eviction under the rent laws for those arrears as well."

In view of this, the appellate Court has rightly refused to pass a decree on the ground of default.

5. As regards the ground of bonafide requirement, the petitioners claim that they are the trustees of a private trust and require the premises for the purpose

of the office of the trust. Under section 13(1)(g) the landlord is entitled to claim possession of the premises if the premises are required by the landlord for occupation of himself or of any person for whose benefit the premises are held. Therefore, in case of a private trust, the requirement for the office of the private trust is not to be considered but the requirement of the beneficiaries is required to be considered. The beneficiaries are minor. Their requirement is not even pleaded in the plaint, much less established. In the circumstances, the ground of bonafide requirement has also been properly negatived.

6. No other point was pressed. Petition rejected.

D.G. KARNIK, J